IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 897 (M/S) 2003

Hashim S/o Barqat,
And others ---- Petitioners.

Vs.

State of Uttaranchal through Secretary Revenue,
And others. ---- Respondents.

Hon'ble P.C. Verma, J.

Heard Sri Rajendra Singh, learned counsel for the petitioners as well as the learned Standing Counsel for respondent No. 1 & 2.

This writ petition arises out of the proceedings drawn against the petitioners under Section 122 B of the U.P.Z.A. & L.R. Act, 1950 (hereinafter referred to as the Act).

In response to the notices issued against the petitioners, the petitioners filed objection before the Tehsildar, Roorkee that they are entitled to remain in possession in view of the Patta granted by the Gram Sabha Jaurasi Mustehqam in 1976. This objection of the petitioners was accepted by the Tehsildar, Roorkee.

The Gram Sabha, Jaurasi filed a revision under Section 122-B-4A of the Act. It appears that the Collector has decided the revision. The Collector has allowed the revision holding that the petitioners are unauthorized occupants and a cost was imposed against the petitioners.

Since the petitioners had claimed right/title in view of the Patta granted by the Gram Sabha in favour of the petitioners, the Collector could not decide this question to get their title declared or to start the proceedings of vacation under procedure 202 or 209 of the Act as the case may be, in a summary proceedings under Section 229-B of the Act. Therefore, the order of the collector is liable to be set-aside.

The order impugned is accordingly set-aside. It is further provided that the petitioners may file a suit under 229-B of the Act within a period of 2½ months from today and the S.D.M. concerned shall decide the suit within four months from the date of filing of the

suit. During the period aforesaid, the possession of the petitioners shall not be disturbed otherwise than in due course of law.

Petition is disposed of accordingly.

(P.C. Verma, J.)

October 16, 2003;
NCM: